

*What Every Member of the  
Trade Community Should Know About:*

# *Importing Commercial Samples*



*An Informed Compliance Publication*

*May 2001*

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**U.S. CUSTOMS**

## **NOTICE:**

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

### *Publication History*

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## **PRINTING NOTE:**

This publication was designed for electronic distribution via the Customs World Wide Web site (<http://www.customs.gov>). It was originally set up in Microsoft Word97<sup>®</sup>. In order to maintain pagination and margins it has been converted to Adobe Acrobat<sup>®</sup> portable document format (.pdf) with some blank pages inserted to allow two sided printing, if your printer has that capability. It can be printed using the freely available Adobe Acrobat Reader<sup>®</sup>.

## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The Commercial Rulings Division of the Office of Regulations and Rulings has prepared this publication on ***Importing Commercial Samples*** as part of a series of informed compliance publications regarding the classification of imported merchandise and advising the public of Customs regulations and procedures. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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## Introduction

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the U.S. Customs Service. In almost all cases, the goods are required to be “entered,” that is, declared to the Customs Service, and are subject to detention and examination by Customs officers to insure compliance with all laws and regulations enforced or administered by the United States Customs Service. As part of the entry process, goods must be “classified” (determined where in the U.S. tariff systems they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter” and “value” the goods and provide any other information necessary to enable the Customs Service to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, anti-dumping or countervailing duties, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the *Harmonized Tariff Schedule of the United States* (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know About: Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know About: Customs Value*. Both of these publications are available from the Customs World Wide Web pages on the Internet (see the Additional Information section for information on accessing these sources and obtaining additional Customs Service publications).

## Purpose

This Informed Compliance Publication provides a brief guide for importing commercial samples into the Customs Territory of the United States. It is intended to be an aid for importers and other interested parties in determining the appropriate method of importation.

## Special Duty Free Provisions

There are several ways for samples, articles imported for the purpose of taking orders for similar merchandise, to be imported duty-free to the Customs Territory of the United States. This section explains the options in Chapter 98, HTSUS and the provisions in Carnets that specifically apply to commercial samples.

- Duty-free consumption entries under 9813.00.20, 9813.00.40 or 9813.00.60;
- Temporary Importation under Bond (TIB) - Subheading 9813.00.20 of Chapter 98, Subchapter XIII of the HTSUS;
- Carnets- 19 CFR Part 114; and
- Prototypes- Subheading 9817.85.01 of Chapter 98, Subchapter XVII of HTSUS.

In addition, in some cases, importers may wish to enter goods under the normal provisions of chapters 1-97 HTSUS. This last option and its advantages or disadvantages is explained in the section entitled: **Regular Entry** (below).

### **OPTION I: DUTY FREE CONSUMPTION ENTRIES**

Under Chapter 98 Subchapter XI, HTSUS, certain goods may enter the Customs Territory with regular consumption entries but free of duty and quota requirements. This is specific to very small quantities of three types of samples and specifically to be used in the United States for soliciting orders by persons importing such merchandise in commercial quantities. In the case of alcoholic beverages or tobacco products, the quantity is limited to one sample of each beverage or tobacco product in a calendar quarter for use of importers of the products in commercial quantities.

- 9811.00.20: Alcoholic beverages samples (each sample containing not more than 300 milliliters if a malt beverage, not more than 150 milliliters if a wine and not more than 100 milliliters if any other alcoholic beverage).
- 9811.00.40: Samples of tobacco products, and cigarette papers and tubes (each sample consisting of not more than (a) 3 cigars, (b) 3 cigarettes, (c) 3.5 grams of tobacco, (d) 25 cigarette papers).
- 9811.00.60: Any sample (except samples covered in 9811.00.20 or 9811.00.40), valued not over \$1 each, or marked, torn, perforated or otherwise treated so that it is unsuitable for sale or for use other than as a sample.
  - Merchandise must be marked "SAMPLE" in indelible ink or paint or cut or torn in the manner prescribed in the Interim Update to Customs Directive 3500-07, Textiles Samples Guidelines, dated January 4, 1989.
  - Textile Samples can be given at no charge to a recycling company either to be made into rags or to be baled and exported.
  - Sample footwear must be marked "SAMPLE- NOT FOR RESALE" conspicuously and in a location where the ink is not likely to wear off.

Unlike the TIB and Carnet provisions discussed below, when 9811.00.20 or 40 are used, the "samples" may be consumed in the course of solicitation of orders.

### **OPTION II: TEMPORARY IMPORTATION UNDER BOND (TIB)**

Temporary importation under bond (TIB) is a procedure whereby under certain conditions, merchandise may be entered into the Customs Territory temporarily free of duty by posting a bond. In the bond the importer agrees to export or destroy the merchandise within a specified time or pay liquidated damages, generally equal to twice the normal duty.

There are fourteen categories of TIBs described in Chapter 98, Subchapter XIII of the Harmonized Tariff Schedules of the United States Annotated (HTSUSA). The TIB provisions are designated as subheadings 9813.00.05 through 9813.00.75, and



9813.00.20 pertains to samples for use solely in taking orders for merchandise. U.S. Note 1(a) governs all TIBs and has two important statements:

a. TIB goods are not to be for sale or sale on approval.

This means that one must have an intent at the time of importation to export or destroy the articles produced from the merchandise.

b. The time period within which TIB goods may remain in the U.S. before being exported or destroyed.

Goods may be admitted under TIB for exportation within one year from the date of importation. The one year period may be extended for one or more further periods which, when added to the initial one year, shall not exceed a total of three years from the date of importation.

### **INTENT OF TIB PROVISION**

The intent in permitting duty free entry of samples is to promote international trade. Therefore, the purpose of importing and using the sample must be to create a demand for that product.

### **DEFINITION OF “SAMPLE” FOR TIB’S AND CARNETS**

For purposes of the TIB and Carnet provisions, Customs defines “sample” as “an article which is imported for the bona fide purpose of taking orders for similar merchandise.”

#### **Interpretation of “sample”:**

- Goods cannot be on display for ordering and then used to fill the order. This prohibits the samples from the provision because all or some of the merchandise was intended for sale.
- The sample does not have to be an exact duplicate of the merchandise being sold.
  - The sample can be a different size or material than the good it is representing.
  - Miniature models and cutaway samples revealing the construction of the product are eligible.
  - Cloth swatches and color cards that display the different colors of merchandise are eligible.
- Photographs are not eligible for entry as samples. However samples entered under 9813.00.20 can be shown on television, used in fashion shows, photographed for publicity purposes, and displayed for advertising purposes so long as orders were to be solicited in connection with their use.
- Although the actual samples are eligible for entry under 9813.00.20, the display panels, signs, backdrops and related exhibit materials may only be permitted entry under 9813.00.50 as professional equipment or tools of trade.

- Both an aircraft and those spare parts designated and used as samples are entitled to entry. The parts that are imported for the express purpose of repairing the aircraft are to be entered under subheading 9813.00.05 as articles to be processed rather than as samples.
- Although food samples (and other consumables) may be brought in as “commercial samples” for display and solicitation of orders, they may not be distributed as samples to be eaten or consumed. If they are to be eaten (or otherwise consumed in a normal matter), regular entry and duty payment (if any) are required.
- Samples that are marked, torn, perforated or otherwise treated so that they are unsuitable for sale or for use other than as samples should be entered under the provision for duty free consumption entry 9813.00.60 (see Option I, above)

### **TIB ENTRY REQUIREMENTS**

Unless the articles are covered by a carnet (see below), entry of commercial samples is usually made on Customs Form 3461 or 7533, followed by an entry summary on a Customs Form 7501 within 10 days. However the 7501 may be filed at the time of entry in which case the other forms are not used. If the articles are brought into the country as accompanying baggage, they may qualify for the simplified procedures for travelers. If the aggregate value of the article is not over \$250, informal entries may be filed. If imported through the international postal system, mail entries may be used, as appropriate.

### **BOND REQUIREMENTS**

For samples entered under subheading 9813.00.20, the Customs Regulations (19 CFR 10.31(f)) provide that the TIB bond shall be in the amount equal to 110% of the estimated duties and fees which would accrue if an ordinary consumption entry had been filed.

Taxes and special duties, (i.e. internal revenue taxes, antidumping and countervailing duties, marking duties, etc.), are taken into account in all bond amount computations. A continuous entry bond may be used only if the dumping or subsidy margin is five percent or less, otherwise, the entry must be secured by a single transaction bond.

Commercial cargo, if loaded or unloaded at a port and from a commercial vessel, is subject to a port use fee of a percent of the cargo value. Harbor maintenance fees however, are not included in any bond computations because they are paid at the time of filing the entry summary package. For more information see 19 CFR 24.24.

### **BREACH OF BOND: LIQUIDATED DAMAGES**

Section 10.39(d)(1), Customs Regulations (19 CFR 10.39(d)(1)) provides that if any article entered under Chapter 98, Subchapter XIII (except if entered under a carnet) has not been exported or destroyed in accordance with the regulations within the

appropriate period of time, there is a breach of the Customs bond, and Customs will demand the payment of liquidated damages equal to 110% of the estimated duties for samples entered under the temporary importation provisions.

### **EXTENSION OF TIME**

An importer can file for an extension of time for exportation as provided in 19 CFR Section 10.37. Extensions can be granted in up to one year increments, the total not to exceed three years from importation. The extension request must be filed with Customs before the appropriate import period expires to not breach the bond. Extensions may be granted at the port where the entry was filed provided:

- The merchandise has not been exported or destroyed before application for extension,
- The extension request was filed with Customs before the expiration of the current temporary importation bond, and
- Liquidated damages have not been assessed before receipt of the application for extension.

Upon the presentation of satisfactory evidence to the director of the port at which samples were entered under subheading 9813.00.20, HTSUS, that such articles cannot be exported for the reason that they have been seized (other than by seizure at the suit of private persons), the requirement of exportation will be suspended for the duration of the seizure. However, the articles must be exported promptly after release from seizure.

### **QUOTA CONSIDERATIONS**

TIBs are considered consumption entries for the purposes of administering quotas T.D. 54802 (54) and (54). TIB entries with any quota class merchandise must be held to the same provisions as set out in 19 CFR Part 132. That is, merchandise that is subject to an absolute quota must come within the quota limitation in order to be released by Customs. Merchandise that requires the presentation of a visa in order to be released by Customs must be accompanied by the visa.

### **SPECIAL RULES FOR TRAVELERS**

There are simplified rules for travelers bringing in commercial samples as accompanied baggage. Samples accompanying a commercial traveler who presents an adequate descriptive list, may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under subheading 9813.00.20 at the place of arrival in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the port director, to determine the amount of the required bond. If the articles are a commercial traveler's samples and exceed \$500 in value, a special Customs invoice or a descriptive list shall be furnished. Under these simplified procedures, normally a bond without surety or cash deposit is required. However, the port director may require a bond with

surety if he believes it is necessary to protect the revenue or prevent the goods from entering the commerce of the United States.

When a commercial traveler contemplates side trips to a contiguous country within the period of time during which the merchandise is authorized to remain in the Customs territory of the United States under bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special Customs invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with Customs officers at the port of exit, and in clearing them through Customs upon his return. Cancellation of the bond shall be effected by permanent exportation in accordance with the provisions of 19 CFR Sec. 10.38 at the time the samples are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension.

Port directors may waive examination of the commercial travelers' samples taken abroad for temporary use at the time of exportation, except where the exportation involves certification of a carnet

The privilege of clearance of commercial travelers' samples on a baggage declaration under bond without surety or cash deposit will not be accorded to a commercial traveler who, through fraud or culpable negligence, has failed to comply with the provisions of a bond in connection with a prior arrival. Such a commercial traveler will be required to file a formal entry under subheading 9813.00.20, HTSUS with a bond supported by a surety or cash deposit in lieu of surety.

There are special procedures for raw cotton samples taken to and returned from Canada and for samples taken to Great Britain and Ireland under a reciprocal agreement. If these situations apply, please check with U. S. Customs officers at the port of exportation from the U.S. and refer to 19 CFR 10.68 or 10.69, respectively.

### **OPTION III: CARNETS**

Samples are also eligible to be temporarily imported through the use of a carnet. The U.S. recognizes two types of carnets under which a sample may be imported temporarily into the U.S.: the A.T.A Carnet and the TECRO/AIT Carnet.

A carnet is a combination entry document and Customs bond. 19 CFR Part 114 sets out the different types of carnets, the coverage of carnets, and states that merchandise not entitled to enter under a TIB provision shall not be entered under a carnet.

A carnet is acceptable for commercial samples to be temporarily entered, or temporarily entered and transported, duty-free under the International Convention to Facilitate the Importation of Commercial Samples and Advertising Materials

Carnets are issued by guaranteeing associations to a party in interest, “the holder,” at the party’s request and upon payment of the association fee. Payment of duty and other sums (taxes, liquidated damages, etc.) which accrue as a result of non-compliance with the terms and conditions of the carnet are guaranteed by the approved guaranteeing association.

### **A.T.A CARNET**

The A.T.A. Carnet (Admission Temporaire-Temporary Admission Carnet) is an international Customs document, backed by an internationally valid guarantee, that may be used for the entry of articles into a country in place of the Customs documents usually required.

The carnet guarantee is based on an international agreement whereby national guaranteeing associations (the ATA Carnet guaranteeing chain), established in the participating countries, are held jointly liable with the carnet holder for compliance with Customs procedures applicable to the type of importation for which the carnet was issued, and for payment of any sums due in the event of non-compliance with said procedures.

The United States Council for International Business (USCIB) has been approved as the issuing and guaranteeing association for carnets used in the United States pursuant to the Customs Convention on the A.T.A. Carnet for the Temporary Importation of Goods.

### **TECRO/AIT CARNET**

“TECRO/AIT Carnet” is the document issued pursuant to the Bilateral Agreement between the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT) to cover the temporary admission of goods.

For more information on TECRO/AIT Carnet, see 19 CFR Part 114.22- 114.34.

### **ADVANTAGE OF USING A CARNET**

Since both carnets are purchased by the importer before leaving the importer’s country, use of the carnet facilitates the importation process upon importation into the US. The carnet simplifies the customs formalities involved in temporarily importing goods into another country. Without a carnet it would be necessary to go through the customs procedures established in each country for the temporary admission of goods. The carnet allows the temporary traveler or businessperson to make customs arrangements in advance and use a single document for certain categories of goods that will pass through customs in several different countries.

## **QUOTAS**

Merchandise entered under a carnet is also subject to quotas and should be treated the same as a TIB for administering quota. If a sample is subject to an absolute quantitative quota and the quota is closed, the merchandise is not admissible into the US. Entry by a carnet does not change this requirement.

## **VALIDITY & EXTENSION OF TIME**

19 CFR Part 114.23 sets out the maximum period of validity for carnets, to not exceed one-year.

Carnets cannot be extended or re-filed. It is possible to substitute a TIB for a Carnet provided that the 1-year period has not run. Because the TIB period cannot exceed three years from the date of importation, after the carnet is timely converted into a TIB entry, only one more TIB extension is allowed.

## **BREACH & DAMAGES**

Part 10.39(d)(2), Customs Regulation provides that if articles entered under a carnet have not been exported or destroyed within the carnet period, the district director shall promptly, but in no case more than one year after the expiration of the period for which the carnet was valid, make demand on the importer and guaranteeing association for liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed.

## **OPTION IV: PROTOTYPES**

Section 1432 of the Tariff Suspension and Trade Act of 2000, which was enacted on November 9, 2000 (Pub. Law 106-476), created a new subheading 9817.85.01 HTSUS for column 1 duty-free treatment of prototypes imported exclusively for development, testing, product evaluation, or quality control purposes.

Under new U.S. note 6 to subchapter XVII, HTSUS, the term “prototypes” means originals or models of articles that—

- (i) are either in the preproduction, production, or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes; and
- (ii) in the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development, or quality control in either the product itself or the means for producing the product).

For purposes of clause (i), automobile racing for purse, prize, or commercial competition shall not be considered to be “development, testing, product evaluation, or quality control.”

Prototypes may be imported only in limited noncommercial quantities in accordance with industry practice. Except as provided for by the Secretary of the Treasury, prototypes or parts of prototypes may not be sold after importation into the United States or be incorporated into other products that are sold. Articles subject to quantitative restrictions, antidumping orders, or countervailing duty orders may not be classified as prototypes under this note. Articles subject to licensing requirements, or which must comply with laws, rules, or regulations administered by agencies other than the United States Customs Service before being imported, may be classified as prototypes if they comply with all applicable provisions of law and otherwise meet the definition of “prototypes.”

Previously, such prototypes were subject to customs duty upon their importation into the United States unless the prototypes qualified for duty-free treatment under special trade programs or unless the prototypes were entered under a temporary importation bond.

Customs is currently promulgating regulations for this provision.

## **Regular Entry**

In addition to the special provisions for commercial samples which are described in the foregoing sections, the importer also has the option of making a regular formal or informal entry (or in appropriate cases, using a baggage declaration for low value shipments) and using the regular classification subheadings in Chapters 1-97 HTSUS.

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Chapters 1-97, HTSUS are based on the international *Harmonized Commodity Description and Coding System* (the “Harmonized System” or “HS”). However, Chapters 98 and 99 of the HTSUS are unique to the U.S.

This option requires the importer to pay regular duties, if any, on the merchandise, but it does have the advantage of allowing the importer to sell the goods or keep them beyond the period covered by a TIB or Carnet, without the destruction or exportation required under those options. This option requires compliance with all laws and regulations (quota, permits or licenses required by other government agencies, etc). This option may be especially appealing to an importer whose goods are normally duty free (such as children's toys), subject to special programs (such as Generalized System of Preferences “GSP” or the Caribbean Basin Initiative “CBI,” etc.) or are subject to very low rates of duty. If this option is used, the importer must use reasonable care to properly classify and value the imported merchandise.

## **Additional Information**

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs

operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site contains the most current electronic versions of, or links to:

- Customs Regulations and statutes
- Federal Register and public information notices
- The Customs Bulletin and Decisions
- Binding Rulings
- Publications including-
  - *Importing Into the U.S.*
  - other Informed Compliance Publications in the “*What Every Member of the Trade Community Should Know About...*” series
  - *Customs Valuation Encyclopedia*
- Video Tape availability and ordering information
- Information for small businesses

The web site links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. The web site also links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December 1999, the CEBB has been only accessible through the web site. Finally, Customs web site contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service’s web address is <http://www.customs.gov>.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed customs broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will usually be found under U.S. Government, Treasury Department.

### **“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).





**U.S. Customs Service  
Washington, D.C. 20229**

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